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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,232	01/06/2004	James P. Lattari	WD-314J	4777

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EXAMINER

WELCH, GARY L

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

58

Office Action Summary	Application No.	Applicant(s)	
	10/752,232	LATTARI, JAMES P.	
	Examiner	Art Unit	
	Gary L. Welch	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>01222004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-17 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 requires that the coiled spring is to be wider than it is thick. The specification and drawings do not disclose which portion(s) of the spring is considered the width and thickness. Is the thickness the thickness of the wire itself or the thickness of one "twist"? For purpose of this action, the thickness is considered the thickness of one "twist".

Claims 2, 3, 6, 13, 15, 16, 17 and 19 are rejected for the same reasons as above (i.e., cannot determine the thickness and width of the coiled spring).

Claims 4, 5, 7-12 and 14 depend from one or more of the above rejected claims and are therefore rejected accordingly under 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 3, 4, 7, 9, 11-14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by van Marwijk et al. (U.S. 5,862,521).

van Marwijk et al. discloses a protective glove 1 having a glove portion and wrist portion fabricated from a mesh material 3 and an elastic element 4 attached to the wrist portion in the form of a coiled spring. It appears from the figures of van Marwijk et al. that the coiled spring is wider than it is thick.

With regard to claim 3, each coil of the coiled spring 4 extends parallel to the glove portion for the width of the coiled spring and then turns perpendicular to the glove portion for the thickness of the coiled spring.

With regard to claim 4, the turn of each coil is rounded.

With regard to claim 7, the coiled spring is made from metal (Col. 2, lines 47-64).

With regard to claim 9, the coils of the coil spring extend through the terminal links of the wrist portion (Col. 1, line 66-Col. 2, line 12).

With regard to claim 11, the invention is disclosed above. The recitation "is color coded with a colored coating that complies with the 21 CFR 175.300" is considered as a product by process claim. Section 2113 of the M.P.E.P. states that even through the product by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product by process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the product was made by a different process. The Patent Office bears a lesser burden of proof in making out

a case of prima facie obviousness for product by process claims. Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to the applicant to come forward with evidence establishing unobvious difference between the claimed product and the prior art product. The Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith. Therefore, the claim is treated as a product by process claim.

With regard to claim 12, a forearm portion 2 is provided with the glove.

With regard to claim 13, the forearm portion 2 also includes an elastic element 4 attached thereto in the form of a coiled spring wider than it is thick.

With regard to claim 14, one coiled spring 4 is attached to the wrist portion thereof and one coiled spring is attached to a forearm portion.

With regard to claim 17, the invention is disclosed in one or more of the above rejected claims.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 2, 5, 6, 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over van Marwijk et al. (U.S. 5,862,521).

van Marwijk et al. discloses the invention substantially as claimed above.

However, van Marwijk et al. does not disclose that the coiled spring is at least twice as wide as it is thick.

A review of the applicant's disclosure does not reveal any criticality for the coiled spring being at least twice as wide as it is thick (i.e., why is twice as wide as it is thick better than any other combination?). Therefore, it would have been obvious through routine experimentation to select and size the coil spring of van Marwijk et al. to be at least twice as wide as it is thick in order to provide a predetermined level of "holding power" so as to ensure that the glove will properly remain positioned onto the wearer's hand without the risk of the glove falling down or off of the user's hand during use.

With regard to claim 5, the claimed values for the number of coils per inch (i.e., between 9 and 11) is not disclosed by van Marwijk et al. However, a review of the applicant's disclose also does not reveal any criticality for the number of coils per inch being between 9 and 11 (i.e., why is 9 to 11 better than 8 to 10 or some other combination?). Therefore, it would have been obvious through routine experimentation to provide a coil spring as taught by van Marwijk et al. but having the number of coils per inch to fall between 9 and 11 in order to provide a predetermined level of elasticity for enabling the glove to be stretched over a user's hand and forming thereto.

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With regard to claim 6, the claimed values for the width and thickness of each coil is rejected for the same reasoning as set forth in the above rejection to claim 5.

With regard to claim 8, the coiled spring is circumferentially disposed around the wrist of the glove and is therefore welded at each end so as to form a closed loop.

With regard to claim 15, the invention is disclosed in one or more of the above rejected claims.

7. Claims 10, 16, 18, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over van Marwijk et al. (U.S. 5,862,521) in view of Cutshall (U.S. 5,231,700).

van Marwijk et al. discloses the invention substantially as claimed above.

However, van Marwijk et al. does not disclose that the coiled spring is color coded with different colors to indicate different glove sizes.

Cutshall teaches a protective glove 10 having the wrist portion color-coded to indicate glove size (see claim 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to color code the wrist portion or coiled spring of van Marwijk et al. as taught by Cutshall in order to indicate different sized gloves.

With regard to claims 16 and 18-20, the invention is disclosed in one or more of the above rejected claims.

Conclusion

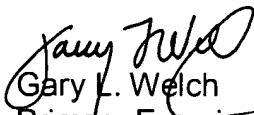
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Torley '210 and Benjamin '286 disclose various types of spring bands for articles of clothing wherein the bands are in the form of a coil. Smith et al. '602 discloses a metal mesh glove having a forearm protective device attached thereto. Besson '190 discloses a metal mesh glove having a forearm protective device having a spring for tightening the glove around the user's hand. Ziegler '241 discloses a metal mesh glove having an elastomeric material disposed at the cuff portion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary L. Welch whose telephone number is (571) 272-4996. The examiner can normally be reached on Mon-Fri 5:30-3:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary L. Welch
Primary Examiner
Art Unit 3765

glw